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2006

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# Pension Reform Legislation

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COMMONWEALTH OF MASSACHUSETTS  
PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

**Commission Members**

The Honorable Domenic J. F. Russo  
*Chairman*

The Honorable A. Joseph DeNucci  
Auditor of the Commonwealth  
*Vice Chairman*

Henry G. Brauer  
Investment Professional

Kenneth J. Donnelly  
Lieutenant  
Lexington Fire Department

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Fall River Police Department

Donald R. Marquis  
Former Town Manager  
Arlington

Thomas Trimarco  
Secretary  
Executive Office of  
Administration & Finance

Joseph E. Connarton  
*Executive Director*

## A Message to the Honorable Members of the Massachusetts General Court,

As you know, the Public Employee Retirement Administration Commission (PERAC) oversees Massachusetts' retirement systems that are a product of nearly 100 years of statutory, regulatory, and administrative evolution. In reality there is not a **single** public system in Massachusetts—there are 106 different systems. Each is independent with considerable responsibilities and powers.

PERAC oversees the operations of all of these systems, excepting oversight of the investments of the Pension Reserves Investment Management Board and its Pension Reserves Investment Trust fund. This includes oversight of the \$14B+ investment activities of all the other boards. The statute governing the systems has been amended on numerous occasions over the years. In 1996, Chapter 306 of the Acts of 1996 created PERAC (the Commission), to refine the oversight role for these systems.

In 2004, after nearly 8 years in existence, the Commission determined that a comprehensive review of the agency's ability to carry out its mission was not only prudent but necessary. The Commission determined that it would review the agency's past—with an eye toward the future. To assist in this effort, in late 2004 the Commission established an Advisory Committee consisting of five governance experts from business and academia to review the existing statutory and regulatory framework and proposals that it had developed for discussion.

The members of the Advisory Committee were:

Scott Harshbarger, former Massachusetts Attorney General, former President and CEO of Common Cause, and currently Senior Counsel to the Firm, Proskauer Rose LLP, who served as Chair.

Professor Cary Coglianese, Chair of the Regulatory Policy Program and Associate Professor of Public Policy, John F. Kennedy School of Government at Harvard University;

Professor Paul M. Healy, James R. Williston Professor of Business Administration, Harvard Business School, Harvard University.

Alan G. Macdonald, Executive Director of the Massachusetts Business Roundtable, a former member of the Winchester Retirement Board, and former Massachusetts Assistant Attorney General; and,

Jerrold Mitchell, Chief Investment Officer at The Boston Foundation, and former Chief Investment Officer of the Pension Reserves Investment Management Board (PRIM).

The Advisory Committee's charge was to objectively and impartially review staff-generated and Commission-approved suggestions emanating from historical experiences, add or subtract as it saw fit, and report back to the Commission with its recommendations. In May of 2005, the Advisory Committee submitted its recommendations to the Commission—recommendations that the Commission unanimously adopted without exception. This Report was distributed to the General Court as our “Blue Book” Reform Initiatives Advisory Committee Report.

Subsequently, PERAC undertook a comprehensive public comment process last fall including conducting four public hearings throughout the State and a major presentation in October at the Massachusetts Association of Contributory Retirement Systems’ Fall Conference. Scott Harshbarger, three PERAC Commissioners, and I participated in a nearly 2-hour presentation and question and answer period at this event to essentially wrap-up the public phase. Comments were accepted until the end of October.

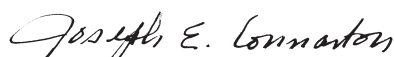
On January 17, PERAC staff presented the reform initiatives to the Joint Committee on Public Service. At their January 25, 2006 meeting, the Commission adopted all of the Advisory Committee recommendations—and those requiring legislative approval are embodied in the bill in this document. A section-by-section explanation is also included.

If adopted, this legislation will provide PERAC with necessary tools to better fulfill its statutorily mandated oversight of the retirement boards in the most effective and efficient manner possible. In so doing, the legislation will help safeguard both the current assets of the retirement boards and the future retirement benefits on which the members depend.

I know that the Commission members, Michael DeVito, PERAC’s legislative director, and the entire staff join me in expressing our gratitude for your strong support of this agency as we have sought to faithfully and professionally execute the mission that you entrusted to us. As we embark on the next phase of our activities, we look forward to working closely with you to strengthen Massachusetts’ public retirement systems.

We respectfully request your favorable consideration of this legislation and would be honored if you would consider sponsorship. Please contact me personally or Michael DeVito at 617-666-4446, ext. 971 should you need additional information or have a desire to co-sponsor this legislation.

Thank you for your consideration.

  
Joseph E. Connarton  
Executive Director

## Section 1

Subdivision (2) of Section 23 of Chapter 32 of the General Laws is hereby amended by striking out sub-paragraph (b) and inserting in place thereof the following: -

- (b) The board of each system shall invest and reinvest the funds of such system in the PRIT Fund pursuant to subdivision (8) of section twenty two, in the PRIT Fund by purchasing shares of said fund, as provided for in the trust agreement adopted by the PRIM Board pursuant to subdivision (2A) or as follows:-
- (i) in accordance with the standards set forth in subdivision (3), provided that: -
  - (A) no investment of funds shall be made in stocks, securities or other obligations of any company which derives more than 15 per cent of its revenues from the sale of tobacco products.
  - (B) in investing such funds the board shall employ an investment manager or investment managers who shall invest the funds of the system.
  - (C) no funds shall be invested directly in mortgages or collateral loans.

No investment of funds shall take place until board has received from the Commission an acknowledgement of receipt of the following:-

- (a) certification that, in making the selection, the board has complied with the process established in section 23A;
- (b) a copy of the vendor certification required under section 23A;
- (c) copies of disclosure forms submitted by the selected vendor;
- (d) a certification that the investment is not a prohibited investment as set forth in regulations of the Commission;
- (e) in the event that the board has retained a consultant, a copy of the recommendation of the consultant pertaining to the investment and the selected vendor;
- (f) a copy of the board certification required under section 23A.

The Commission may withhold the acknowledgement if it determines that it is in the best interest of the retirement system.

Prior to the retention of an investment consultant the board must receive from the Commission an acknowledgement of receipt of the following:-

- (a) a certification that, in making the selection, the board has complied with the process established in section 23A;
- (b) copy of the vendor certification required under section 23A;
- (c) copies of disclosure forms submitted by the selected consultant;
- (d) copy of the board certification required under section 23A.

## Section 1 Notes

### **Section 1 eliminates investment exemption process**

*The Retirement Boards have invested assets pursuant to essentially the same process since 1985. The general thrust of this aspect of the statute was initially focused on the transition from strict Legal List investing to the prudent person standard of modern investment management. Boards have now experienced almost 20 years of investing under the prudent person standard and thus the general statutory scheme that limits their flexibility and imposes procedural complications should be revised.*

*Existing law provides that Boards will invest the assets "in securities other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth"...however, those limits will not apply to "the board of any local retirement system which upon application is determined by the Commission to have a record of investment management which merits broader powers." On such systems the statute establishes limits on investment in tobacco companies, investing in mortgages and collateral loans, investing in Northern Ireland and investing in South Africa.*

*It is this language that resulted in PERA initially establishing a "waiver" process by which Boards could receive a "waiver" from the Legal List limitations and thus invest according to regulations and the fiduciary standard set forth in Chapter 32, Section 23 (3).*

**(Continued on next page)**

## Section 1 Notes (cont.)

The proposal retains the requirement that filings take place with respect to each manager and that no investment may proceed unless PERAC completes a review of those filings. This will enable the Commission to increase emphasis on competitive process and fiduciary compliance. It is also proposed that the selection of vendors by Boards be subject to a process similar to Chapter 30B (see Section 14).

In addition, other elements of the proposal relating to PERAC's authority to take remedial action will result in greater enforcement tools than those available under the existing process (see Section 16). In short, the initiative recognizes that all Boards now possess

the expertise to invest free of the Legal List and in fact, due to the impact that investing according to that strict limitation would have on performance, the threat of refusing to grant exemptions is a hollow one.

In addition, the expansion of existing disclosure requirements relating to payments associated with obtaining business from a Retirement Board and enhanced penalties for failure to disclose such as debarment would form an essential ingredient of the investment oversight process. The annual filing of disclosure forms and the delineation of all payments from or to any source would be components of the changes.

In retaining a manager or investing in a trust/partnership, the Board would be required to submit to PERAC:

- (1) Disclosure Forms;
- (2) Record of compliance with Chapter 30B like process;
- (3) Copy of Consultant Written Recommendation;
- (4) Certification that investment is not a "Prohibited Investment";
- (5) Vendor non-collusion certification; and
- (6) Board non-collusion certification

PERAC would retain the ability to prohibit a particular investment if it is in the best interest of the system.

## Section 2

Section 50 of Chapter 7 of the General Laws as appearing in the 2004 Official Edition is hereby amended by striking out lines 68 through 69 inclusive.

## Section 3

Subdivision (2) of Section 23 of Chapter 32 of the General Laws is hereby amended by striking out paragraph (g) and paragraph (h).

## Section 4

Subdivision (2A) of Section 23 of the General Laws is hereby amended by striking out paragraph (h) and inserting in place thereof the following:-

- (h) Subject to the approval or ratification of the PRIM Board, the executive director shall invest and reinvest such funds held by the board to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section provided that:-
  - (i) no funds are to be invested directly in mortgages or in collateral loans;
  - (ii) no public pension funds under this subdivision shall remain invested in the stocks, securities, or other obligations of any company which derives more than 15 per cent of its revenue from the sale of tobacco products provided, however, that if sound investment policy so requires, the PRIM board may vote to spread the sale of such stocks, securities or other obligations of such company over no more than three years, so that no less than one-third the value of said investment is sold in any one year. So long as any funds remain invested in any stocks, securities, or other obligations of any such company, the PRIM board shall annually, on or before January 31, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book value as of the preceding December first.

The investment and fund management policies adopted by the PRIM board shall not be subject to any rules or regulations promulgated by the Commission governing the investment of funds by the retirement boards.

## Section 2 Notes

*Section 2 eliminates reference to exemption process in PERAC enabling statute*

## Section 3 Notes

*Section 3 eliminates SA, NI limitations*

*This aspect of the proposal repeals the statutory limits on investing in Northern Ireland and South Africa which are difficult to enforce and no longer relevant.*

## Section 4 Notes

*Section 4 eliminates SA and NI limitations for PRIM*

*This aspect of the proposal repeals the statutory limits on investing in Northern Ireland and South Africa which are difficult to enforce and no longer relevant.*

## Section 5 Notes

### **Section 5 eliminates SA limitations**

*This aspect of the proposal repeals the statutory limits on investing in South Africa which are difficult to enforce and no longer relevant.*

## Section 6 Notes

### **Section 6 amends 30B to refer to the process created in this proposal**

*This section amends the existing language in Chapter 30B that provides that Chapter 30B will not apply to contracts for "retirement board services" by adding a requirement that such contracts comply with new provisions of Chapter 32 relating to procurement.*

## Section 7 Notes

### **Debarment**

*This aspect of the proposal is patterned after existing law relating to construction vendors. Essentially, it enables the Commission to debar vendors based on:*

- (1) *conviction or final adjudication by a court or administrative agency of any of the following:*
  - (a) *criminal offense relating to obtaining a contract or in the performance of a contract;*
  - (b) *criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any offense indicating lack of integrity or honesty which seriously and directly effects the vendors*

**(Continued on next page)**

## Section 5

Section 23 of Chapter 32 of the General Laws is hereby amended by striking out subdivision (5).

## Section 6

Clause (19) of paragraph (b) of Section (1) of Chapter 30B of the General Laws is hereby amended by adding the following:-

provided, however, that such procurements shall take place in accordance with the provisions of section 23A of chapter 32.

## Section 7

Chapter 32 of the General Laws is hereby amended by adding the following section: -

Section 21A. (a) As used in this section the following words shall, unless the context requires otherwise, have the following meanings: -

"Affiliates", entities which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

"Commission", the Public Employee Retirement Administration Commission.

"Vendor", any person that has furnished or seeks to furnish supplies or services under a contract with a retirement board.

"Debarment", an exclusion from contracting or subcontracting with a retirement board for a reasonable, specified period of time commensurate with the seriousness of the offense.

"Retirement board", a board established pursuant to the provisions of chapter 32, the provisions of chapter 34B or the Massachusetts water resources authority retirement board, excluding the pension reserves investment management board.

"Person", any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.



## Section 7 (cont.)

"Contract", a contract for the furnishing of supplies or services to any retirement board.

"Suspension", the temporary disqualification of a vendor who is suspected, upon adequate evidence, of engaging or having engaged in conduct which constitutes grounds for debarment.

- (b) The Commission shall establish and maintain a consolidated list of vendors to whom contracts shall not be awarded and from whom offers, bids, or proposals shall not be solicited. The list shall show at a minimum the following information: (1) the names of those persons debarred or suspended in alphabetical order with an appropriate cross reference where more than one name is involved in a single debarment or suspension; (2) the basis of authority for each debarment or suspension; (3) the extent of restrictions imposed; (4) the termination date of each debarment or suspension; and (5) in the case of a suspension, the hearing date, if and when set, for debarment proceedings.

The Commission shall cause the list to be kept current by the issuance of notices of additions and deletions. The list shall be published on a periodic basis, together with notices of additions and deletions therefrom, in the goods and services bulletin and the central register published by the state secretary and in such other publications as the Commission shall designate. The Commission shall also forward said list to the inspector general, the attorney general, and the state auditor.

- (c) Debarment may be imposed for the following causes:
- (1) conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses: (i) a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; (ii) a criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the vendor's present responsibility as a public contractor; (iii) a violation of state or federal antitrust laws arising out of the submission of bids or proposals; (iv) a violation of chapter two hundred and sixty-eight A; (v) a violation of chapter thirty-two-.
  - (2) substantial evidence, as determined by the Commission, of any of the following acts: (i) willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract; (ii) willful failure to comply with record-keeping and accounting requirements prescribed by law or

## Section 7 Notes (cont.)

*ability to meet its contractual duties; (c) violation of federal or state laws regarding submissions of bids or proposals; a violation of state or federal laws regulating campaign contributions and (d) violation of C. 268A.*

- (2) *substantial evidence as determined by the Commission of (a) supplying materially false information incident to obtaining or attempting to obtain a public contract or subcontract; (b) failure to comply with record keeping and accounting requirements prescribed by law or regulation; (c) a record of failure to perform or of unsatisfactory performance with respect to public contracts; (d) submission to the board and the Commission of an inaccurate Disclosure Statement relating to payments to third parties; (e) failure to disclose to the board and the Commission compensation provided to others regarding the obtaining or the performance of a contract; and (f) any other cause affecting the responsibility of the vendor which the Commission determines to be sufficient to warrant debarment.*

*The process has two steps*

- (1) *suspension – a temporary disqualification of a vendor who is suspected upon adequate evidence of engaging or having engaged in conduct which constitutes grounds for debarment.*

**(Continued on next page)**

## Section 7 Notes (cont.)

*Suspension shall not exceed 12 months unless a pending administrative or judicial proceeding may result in a conviction or final adjudication of one of the offenses listed.*

- (2) *Debarment may include all known affiliates of the vendor.*

*Debarment may be removed or the period reduced upon application setting forth appropriate grounds for relief such as newly discovered evidence, reversal of a judgment or conviction, bona fide change of ownership or management or the elimination of the cause for which the debarment was imposed.*

*During the period of the debarment no bids may be submitted to Retirement Boards and no contracts or contract extensions executed and a vendor shall not contract with a debarred contractor as a subcontractor.*

## Section 7 (cont.)

regulation; (iii) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more public contracts, provided that such failure to perform or unsatisfactory performance has occurred within a reasonable period of time preceding the determination to debar and provided further that such failure to perform or unsatisfactory performance was not caused by factors beyond the vendor's control; (iv) the submission to the board or the Commission of an inaccurate disclosure statement (v); the failure to disclose to the board and the Commission any compensation provided to any person in regards to attempting to obtain or the performance of a public contract or subcontract, including, but not limited to, compensation provided by third parties retained by the vendor to any other person; (vi) any other cause affecting the responsibility of a vendor which the Commission determines to be of such a serious and compelling nature as to warrant debarment.

- (d) No vendor may be suspended unless the Commission has first informed the vendor by written notice of the proposed suspension mailed by registered or certified mail to the vendor's last known address, except when the Commission determines that immediate suspension is necessary to prevent serious harm to the retirement system, in which case the suspension shall take effect immediately upon signing by the executive director of an order of suspension, and notice shall be mailed to the vendor at the earliest opportunity. The notice shall inform the vendor of the reasons for the proposed suspension and shall state that the vendor may within fourteen days respond in writing and may in such response request a hearing. The Commission may extend the period for response at the request of the vendor. The Commission shall determine whether to impose the suspension or, in the case of an emergency suspension imposed prior to notice to the vendor, whether to continue the suspension after reviewing the vendor's response, if any, and making such investigation as the Commission determines is necessary and appropriate. An indictment, or any information or other filing by a public agency charging a criminal offense, for any of the offenses listed in paragraph (1) of subsection (c) shall constitute adequate evidence to support a suspension.

If the vendor requests a hearing, and the suspension is not based on an indictment, the Commission shall conduct a hearing according to the rules for the conduct of adjudicatory hearings established by the secretary of administration pursuant to chapter thirty A. Such hearing shall be initiated within thirty days of the imposition of the suspension, unless the vendor requests that the hearing be delayed. Officers and employees of the Commission and records of the Commission shall not be subject to subpoena for such hearing, if in the opinion of the

## Section 7 (cont.)

Commission production of records or testimony would prejudice any pending investigation by the Commission.

A suspension shall not exceed twelve months unless a pending administrative or judicial proceeding in which the vendor is a party may result in a conviction or final adjudication of an offense listed in paragraph (1) of subsection (c).

- (e) No vendor may be debarred under this section unless the Commission has first informed the vendor by written notice of the proposed debarment mailed by registered or certified mail to the vendor's last known address. The notice shall inform the vendor of the reasons for the debarment and shall state that the vendor will be accorded an opportunity for a hearing if the vendor so requests within fourteen days of receipt of the notice. A hearing requested under this paragraph shall be conducted by the Commission within sixty days of receipt of the request, unless the Commission grants additional time therefore at the request of the vendor. The hearing shall be conducted according to the rules for the conduct of adjudicatory hearings established by the Commissioner of administration pursuant to chapter thirty A. A debarment shall not be imposed until (i) fourteen days after receipt by the vendor of notice of the proposed debarment if no hearing is requested, or (ii) the issuance of a written decision by the Commission which makes specific findings that there is sufficient evidence to support the debarment and that debarment for the period specified in the decision is required to protect the integrity of the public contracting process. A vendor shall be notified forthwith of the decision by registered or certified mail, and of the vendor's right to judicial review in the event that the decision is adverse to the vendor. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
- (f) A debarment or suspension may include all known affiliates of a vendor. The decision to include a known affiliate within the scope of a debarment or suspension shall be made on a case-by-case basis, after giving due regard to all relevant facts and circumstances. The offense or act of an individual justifying suspension, or the evidence justifying a suspension, may be imputed to the entity with which the individual is connected when such offense or act occurred in connection with the individual's performance of duties for or on behalf of the entity or with the knowledge, approval, or acquiescence of the entity or one or more of its principals. The entity's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence. The offense or act of an entity justifying debarment, or the evidence justifying a suspension, may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the entity who participated in, knew of, or had reason to know of the entity's act. An entity may not be suspended or debarred except in accordance with the procedures set forth in this section.

- (g) In determining whether to debar a vendor, or the period of a debarment, all mitigating facts and circumstances shall be taken into consideration. A debarment may be removed or the period thereof may be reduced by the Commission upon the submission of an application supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a judgment or conviction, bona fide change of ownership or management, or the elimination of the cause for which the debarment was imposed.
- (h) During the period for which a person has been debarred or suspended, that person shall not submit or cause to be submitted offers, bids, or proposals to any retirement board, nor shall any retirement board solicit or consider offers, bids, or proposals from, nor execute, renew, or extend any contract with, a debarred or suspended vendor, and a vendor shall not contract for services from a debarred or suspended subcontractor on any contract with a retirement system.

## Section 8 Notes

### **Annual certification by Board members**

*All Board members will be required to annually certify to PERAC under the pains and penalties of perjury as to whether they are aware of any violations of fiduciary duty by any Board/Board member, any violations of Chapter 268A by any Board/Board member, any violations of Chapter 32 by any Board/Board member, and any violations of regulations by any Board/Board member. In the event of failure to file or filing of an inaccurate certification in addition to other penalties the person shall be suspended and then removed from serving on the Board and prohibited from serving on any Board.*

## Section 8

Subdivision (3) of Section 23 of Chapter 32 of the General Laws is hereby amended by adding the following:

Each member of a retirement board established pursuant to the provisions of this chapter shall annually certify to the Commission, under the pains and penalties of perjury, as to whether he or she is aware of any violation by said board or board member or any other board or board member of the standards set forth in this paragraph, chapter 268A of the general laws, the provisions of this chapter and the provisions of regulations promulgated pursuant to this chapter. In the event that a board member fails to file such certification on or before January 1 of each year he or she shall be suspended from said board as of that date. In the event that such certification is not received on or before February 1 of each year he or she shall be removed from said board and shall not be permitted to serve on a retirement board established pursuant to the provisions of this chapter.

## Section 9

Chapter 32 of the General Laws is hereby amended by adding the following section:-

Section 20C.

- (a) Every member of a retirement board shall file a statement of financial interests for the preceding calendar year with the Commission within thirty days after becoming a member of a retirement board, on or before May first of each year thereafter that such person is a member of a retirement board and on or before May first of the year after such person ceases to be a member of a retirement board;
- (b) The Commission shall, upon receipt of a statement of financial interests pursuant to the provisions of this section, issue to the person filing such statement a receipt verifying the fact that a statement of financial interests has been filed and a receipted copy of such statement.
- (c) No member of a retirement board shall be allowed to continue in his duties unless he has filed a statement of financial interests with the Commission as required by this section.
- (d) The statement of financial interests filed pursuant to the provisions of this section shall be on a form prescribed by the Commission and shall be signed under penalty of perjury by the reporting person.
- (e) Reporting persons shall disclose, to the best of their knowledge, the following information for the preceding calendar year, or as of the last day of said year with respect to the information required by clauses (2), (3) and (6) below; such persons shall also disclose the same information with respect to their immediate family provided, however, that no amount need be given for such information with regard to the reporting person's immediate family:
  - (1) the name and address of, the nature of association with, the share of equity in, if applicable, and the amount of income if greater than one thousand dollars derived from each business with which he is associated;
  - (2) the identity of all securities and other investments with a fair market value of greater than one thousand dollars which were beneficially owned, not otherwise reportable hereunder;
  - (3) the name and address of each creditor to whom more than one thousand dollars was owed and the original amount, the amount outstanding, the terms of repayment, and the general nature of the security pledged for each such obligation except that the original amount and the amount outstanding need not be reported for a mortgage on the reporting person's primary residence; provided, however, that obligations arising out of retail

## Section 9 Notes

### **Board filing of statements of financial interest**

*This aspect of the reform measure would require that all Board members file Financial Disclosure Statements with PERAC each year. The requirements are patterned after the Ethics Commission statute requiring financial disclosure by public employees. Failure to file will result in removal from the Board and a prohibition on serving on any Board.*

## Section 9 (cont.)

installment transactions, educational loans, medical and dental expenses, debts incurred in the ordinary course of business, and any obligation to make alimony or support payments, shall not be reported; and provided, further, that such information need not be reported if the creditor is a relative of the reporting person within the third degree of consanguinity or affinity;

- (4) the name and address of the source, and the cash value of any reimbursement for expenses aggregating more than one hundred dollars in the calendar year if the recipient is a member of a retirement board and the source of such reimbursement is a person having a direct interest in a matter before the retirement board of which the recipient is a member;
- (5) the name and address of the donor, and the fair market value, if determinable, of any gift(s) in the calendar year, if the recipient is a member of a retirement board and the source of such gift(s) is a person having a direct interest in a matter before the retirement board of which the recipient is a member;
- (6) the name and address of the source, and the fair market value, of any honoraria aggregating more than one hundred dollars if the recipient is a member of a retirement board and the source of such honoraria is a person having a direct interest in a matter before a retirement board;
- (7) the name and address of any creditor who has forgiven an indebtedness of over one thousand dollars, and the amount forgiven; provided, however, that no such information need be reported if the creditor is a relative within the third degree of consanguinity or affinity of the reporting person, or the spouse of such a relative; and,
- (8) the name and address of any business from which the reporting person is taking a leave of absence.

Nothing in this section shall be construed to require the disclosure of information, which is privileged by law.

Failure of a reporting person to file a statement of financial interests within ten days after receiving notice in writing from the Commission which states in detail the deficiency and the penalties for failure to file a statement of financial interests, or the filing of an incomplete statement of financial interests after receipt of such a notice shall result in the removal of the reporting person from the board, and he or she shall not be permitted to serve on any retirement board established pursuant to the provisions of this chapter. Said failure is a violation of this chapter and the Commission may initiate appropriate proceedings pursuant to the provisions of section twenty-four.

## Section 10

Clause 26th of Section 7 of Chapter 4 of the General Laws is hereby amended by adding the following sub-clause:-

(q) statements filed pursuant to Section 20C of Chapter 32.

## Section 11

Section 20 of Chapter 32 of the General Laws is hereby amended by adding the following paragraph:-

(4 7/8 C) No employee, contractor, vendor or any person receiving any remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from any person doing business with a retirement board shall be eligible to serve on a retirement board provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which he or she is employed and provided, further, that the provisions of this paragraph shall apply only to individuals who first become members of a retirement board on or after January 1, 2007.

## Section 12

Paragraph (b) of Section 19 of Chapter 34B of the General Laws is hereby amended in line 14 by inserting the following after the word "32":-

Provided that no employee, contractor, vendor or person receiving any remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from any person doing business with a retirement board shall be eligible to serve on a retirement board provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which he or she is employed and provided, further, that the provisions of this paragraph shall apply only to individuals who first become members of a retirement board on or after January 1, 2007.

## Section 10 Notes

*Section 10 provides that the financial statements filed pursuant to section 9 will not be subject to release as a public record.*

## Section 11 Notes

*Limitations on Board membership*

*No person receiving any "remuneration, financial benefit, or consideration of any kind" from a Retirement Board (other than a recipient of a retirement benefit or a recipient of the statutory stipend for serving on the Board) or from any person doing business with a Retirement Board may serve on a Retirement Board. No one receiving compensation from a Board or from a vendor for a Board may serve on a Board except members receiving a stipend, receiving retirement benefits and staff who may serve on a Board other than their own. The prohibition applies to individuals who first become members of a Board after 1/1/07.*

## Section 12 Notes

*Same as 11 for regional systems*



## Section 13 Notes

*Increase in penalties for violations of Chapter 32 or rules/regulations*

## Section 14 Notes

*Chapter 30B like rules for procurement by Boards*

*The proposal would make all retirement board procurements and contracts subject to a process similar to that of Chapter 30B of the General Laws, the public procurement law. It is clear from information that we have reviewed in the last year as well as ongoing questions from Boards relative to procurement, including the circumstances when a competitive process is required, that the Boards do not possess a full understanding of the importance of competitive bidding and the need to negotiate contracts aggressively. Particular focus is on investment-related contracts. Board purchase or lease of property would be subject to the same provisions as cities and towns.*

## Section 13

Section 24 of Chapter 32 of the General Laws is hereby amended by striking out subdivision (2) and inserting in place thereof the following:-

(2) Any person who willfully refuses or neglects to comply with any provision of sections one to twenty-eight inclusive, or any rule or regulation established thereunder shall be punished by a fine of not more than ten thousand dollars or imprisonment for not more than two years or both.

## Section 14

Chapter 32 of the General Laws is hereby amended by adding the following section -

### Section 23A

- (a) This section shall apply to every retirement board contract for the procurement of investment, actuarial, legal and accounting services.
- (1) As used in this section the following words shall, unless the context requires otherwise, have the following meanings:--
- “Contract”, all types of agreements for the procurement of services, regardless of what the parties may call the agreement.
- “Contractor”, a person having a contract with the retirement board.
- “Retirement board”, a board established under the provisions of this chapter, the provisions of chapter thirty-four B or the massachusetts water resources authority retirement board excluding the pension reserves investment management board.
- “Majority vote”, as to any action by or on behalf of a retirement board, a simple majority of the board.
- “Minor informalities”, minor deviations, insignificant mistakes, and matters of form rather than substance of the proposal, or contract document which can be waived or corrected without prejudice to other offerors, potential offerors, or the retirement board.
- “Person”, any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.
- “Procurement”, acquiring a service, and all functions that pertain to the obtaining of a service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.



## Section 14 (cont.)

"Proposal", a written offer to provide a service at a stated price submitted in response to a request for proposals.

"Purchase description", the words used in a solicitation to describe the services to be purchased, including specifications attached to or incorporated by reference into the solicitation.

"Request for proposals", the documents utilized for soliciting proposals, including documents attached or incorporated by reference.

"Responsible bidder or offeror", a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance.

"Responsive bidder or offeror", a person who has submitted a bid or proposal which conforms in all respects to the request for proposals.

"Services", the furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

- (1) A retirement board shall enter into procurement contracts for investment, actuarial, legal and accounting services utilizing competitive sealed proposals, in accordance with the provisions of this section.
  - (2) A retirement board that awards a contract shall maintain a file on each such contract and shall include in such file a copy of all written documents required by this section. Written documents required by this section shall be retained by the retirement board for at least six years from the date of final payment under the contract.
- (b) The retirement board shall give public notice of the request for proposals and a reasonable time prior to the date for the opening of proposals. The notice shall:
- (1) indicate where, when and for how long the request for proposal may be obtained;
  - (2) describe the service desired, and reserve the right of the retirement board to reject any or all bids;
  - (3) remain posted, for at least two weeks, in a conspicuous place in or near the offices of the retirement board until the time specified in the request for proposals; and

## Section 14 (cont.)

- (4) be published at least once, not less than two weeks prior to the time specified for the receipt of proposals, in a newspaper of general circulation within the area served by the retirement board and in the case of a procurement for investment, accounting, actuarial or legal services in a publication of interest to those engaged in providing such services.

The retirement board shall also place the notice in any publication established by the state secretary for the advertisement of such procurements.

The retirement board may distribute copies of the notice to prospective bidders, and may compile and maintain lists of prospective bidders to which notices may be sent.

- (c) The retirement board shall unconditionally accept a proposal without alteration or correction, except as provided in this paragraph. A bidder may correct, modify, or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date set for the proposal opening. After the proposal opening, a bidder may not change the price or any other provision of the proposal in a manner prejudicial to the interests of the retirement board or fair competition. The retirement board shall waive minor informalities or allow the bidder to correct them. If a mistake and the intended proposal are clearly evident on the face of the proposal document, the procurement officer shall correct the mistake to reflect the intended correct proposal and so notify the bidder in writing, and the bidder may not withdraw the proposal. A bidder may withdraw a proposal if a mistake is clearly evident on the face of the proposal document but the intended correct proposal is not similarly evident.
- (d) The retirement board shall solicit proposals through a request for proposals. The request for proposals shall include:
  - (1) the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, the maximum time for proposal acceptance by the retirement board;
  - (2) the purchase description and all evaluation criteria that will be utilized pursuant to paragraph (d); and
  - (3) all contractual terms and conditions applicable to the procurement provided that the contract may incorporate by reference a plan submitted by the selected offeror for providing the required services.

## Section 14 (cont.)

The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain the documents. The retirement board shall make copies of the request for proposals available to all persons on an equal basis.

- (e) The retirement board shall not open the proposals publicly, but shall open them in the presence of one or more witnesses at the time specified in the request for proposals. Notwithstanding the provisions of section seven of chapter four, until the completion of the evaluations, or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of proposals the retirement board shall prepare a register of proposals which shall include the name of each offeror and the number of modifications, if any, received. The register of proposals shall be open for public inspection.
- (f) The retirement board shall be responsible for the evaluation of the proposals. The retirement board shall prepare their evaluations based solely on the criteria set forth in the request for proposals. The evaluations shall specify in writing:
  - (1) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous, or unacceptable, and the reasons for the rating;
  - (2) a composite rating for each proposal, and the reasons for the rating; and
  - (3) revisions, if any, to each proposed plan for providing the required services which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal.
- (g) The retirement board shall determine the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The retirement board shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement. The retirement board may condition an award on successful negotiation of the revisions specified in the evaluation, and shall explain in writing the reasons for omitting any such revision from a plan incorporated by reference in the contract.

## Section 14 (cont.)

- (h) In the event of a competitive process to select an investment service provider the request for proposals shall include mandatory contractual terms and conditions to be incorporated into the contract including provisions stating that the contractor is a fiduciary with respect to the funds which the contractor invests on behalf of the retirement board, provisions stating that the contractor shall not be indemnified by the retirement board, provisions requiring the contractor to annually inform the Commission and the board of any arrangements in oral or in writing, for compensation or other benefit received or expected to be received by the contractor or a related person from others in connection with the contractor's services to the retirement board or any other client, provisions requiring the contractor to annually disclose to the Commission and the retirement board any compensation, in whatever form, paid or expected to be paid, directly or indirectly, by the contractor or a related person to others in relation to the contractor's services to the retirement board or any other client, and provisions requiring the contractor to annually disclose to the Commission and the retirement board in writing any conflict of interest the contractor may have that could reasonably be expected to impair the contractor's ability to render unbiased and objective services to the retirement board. Other mandatory contractual terms and conditions shall address investment objectives, brokerage practices, proxy voting and tender offer exercise procedures, terms of employment and termination provisions. The retirement board shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The retirement board may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with such offeror, the retirement board determines that it is in the best interests of the retirement board, the retirement board may determine the proposal which is the next most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals, and may negotiate all terms of the contract with such offeror. The retirement board shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, the evaluated criteria set forth in the request for proposals, and the terms of the negotiated contract. The retirement board shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The time for acceptance may be extended for up to 45 days by mutual agreement between the retirement board and the responsible and responsive offeror offering the most advantageous proposal as determined by the retirement board.

## Section 14 (cont.)

On or before January 1 of each year the contractor shall file the disclosures required herein with the board and the Commission. Failure to file disclosures or the filing of inaccurate disclosures shall subject the contractor to proceedings under section 21A.

- (6) The retirement board may cancel a request for proposals or may reject in whole or in part any and all proposals when the retirement board determines that cancellation or rejection serves the best interests of the system. The retirement board shall state in writing the reason for a cancellation or rejection.
- (7) A person submitting a proposal for the procurement or disposal of services to any retirement board shall certify in writing on the proposal as follows:

The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

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(Signature of individual submitting bid or proposal)

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(Name of business)

- (8) Each retirement board member shall certify to the Commission in writing with respect to a procurement subject to the provisions of this section, as follows:

The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

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(Signature of individual retirement board member)

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(Name of retirement board)

- (9) No person shall cause or conspire to cause the splitting or division of any request for proposals, proposal, solicitation, or quotation for the purpose of evading a requirement of this section.

## Section 14 (cont.)

(10) Unless otherwise provided by law and subject to paragraph (a), a retirement board may enter into a contract for any period of time which serves the best interests of the retirement board; provided, however, that the retirement board shall include in the solicitation the term of the contract and conditions of renewal, extension or purchase, if any.

- (a) A retirement board shall not award a contract for a term exceeding five years, including any renewal, extension, or option provided, however, that a retirement board may participate in a limited partnership, trust or other entity with a term for a period longer than five years as part of an investment of system assets.

When a contract is to contain an option for renewal, extension, or purchase, the solicitation shall include notice of the provision. The retirement board shall retain sole discretion in exercising the option, and no exercise of an option shall be subject to agreement or acceptance by the contractor.

- (b) The retirement board shall not exercise an option for renewal, extension or purchase unless the retirement board, after reasonable investigation of costs and benefits, has determined in writing that the exercise of the option is more advantageous than alternate means of procuring comparable services.

(11) All specifications shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary service, or a procurement from a sole source.

(12) All contracts shall be in writing, and the retirement board shall make no payment for a service rendered prior to the execution of such contract.

- (a) A contract made in violation of this section shall not be valid, and the retirement board shall make no payment under such contract. Minor informalities shall not require invalidation of a contract.
- (b) A person who causes or conspires with another to cause a contract to be solicited or awarded in violation of a provision of this section shall forfeit and pay to the appropriate retirement board a sum of not more than two thousand dollars for each violation. In addition, the person shall pay double the amount of damages sustained by the retirement board by reason of the violation, together with the costs of any action. If more than one person participates in the violation, the damages and costs may be apportioned among them.
- (c) The Commission shall have authority to institute a civil action to enforce paragraph (b).

## Section 15

Section 21 of chapter 32 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out Subsection (2) inserting in place thereof the following paragraph:-

- (2) The Commission may assess costs on any retirement system attributable to services provided by the Commission to said retirement system in the event that the Commission determines that extraordinary resources were expended in the course of supervising the applicable system. Said assessments shall be comprised of a charge for the administrative expenses of the Commission and a charge for services rendered to the retirement system by the Commission. Any expenses incurred under the provisions of this section in connection with the supervision of any system shall be paid by the applicable system as determined by the Commission. Each retirement system shall reimburse said expenses attributable to such retirement system to the pension reserves investment trust administered by the pension reserves investment management board within ninety days of receiving an invoice from the Commission.

## Section 16

Section 23 of Chapter 32 of the General Laws is hereby amended by striking out subdivision (4) and inserting in place thereof the following: -

- (4) If the Commission determines that a board of any retirement system has violated or neglected to comply with any provisions of this chapter, or the rules and regulations promulgated by the Commission, the Commission may determine that such system should be managed in accordance with orders of said Commission. The Commission is hereby authorized to appoint a committee, which may include members of the Commission, to oversee any board that is responsible for the administration of any such system. Said committee shall direct the board to take or desist from any action in order to insure that the system is managed with reasonable care, skill, prudence and diligence. Such direction may include, but is not limited to, the following:-
  - (a) transfer of assets to the PRIT Fund;
  - (b) removal of a board member(s);
  - (c) appointment of board member(s);
  - (d) termination of contracts;
  - (e) approval or denial of retirement benefits;
  - (f) employment or termination of employees; and,
  - (g) conduct a fiduciary audit.

## Section 15 Notes

*PERAC special assessments on systems for extraordinary oversight expenses.*

## Section 16 Notes

### *PERAC Orders*

*As the Commission has discussed on numerous occasions, the existing statute provides no direct authority for the Commission to take remedial action when a Board is mismanaging a system. The ability to place system assets in the PRIT Fund in the event of concerns about investment management, as well as the ability to intercede in the day-to-day operations of the system when maladministration is impacting other aspects of the duty owed by a Board to the system members, would provide PERAC with the tools to correct major problems directly and efficiently.*

## Section 16 (cont.)

Any person receiving a notice from the Commission as set out above shall not have a right to appeal the receipt of such notice to the Contributory Retirement Appeal Board. Any person receiving any communication, either verbal or written, subsequent to the notice as required by this section in connection with the same matter shall not have a right to appeal the receipt of such communication to the Contributory Retirement Appeal Board. Any person aggrieved by any action taken, notice made or determination rendered by the Commission in connection with this section shall have a right to appeal to the superior court, in accord with Section 16(6) of Chapter 32.

### Sections 17/18 Notes

*Sections 17 and 18 provides that appeals relative to PERAC action under section 16 will be directly to court.*

## Section 17

Subdivision (4) of Section 16 of Chapter 32 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “fulfilled”, in line 99, the following words:- and matters subject to review by the superior court as provided for in subdivision (6).

## Section 18

Section 16 of Chapter 32 of the General laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subdivision:-

- (6) The Commission may institute appropriate proceedings in the superior court for enforcement of its final orders or decisions issued pursuant to subdivision (4) of section 23 of chapter 32. Any party aggrieved by a final order or decision of the Commission pursuant to subdivision (4) of section 23 of chapter 32 may institute proceedings for judicial review in the superior court within thirty days after receipt of such order or decision. Any proceedings in the superior court shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A, and may be instituted in the superior court for the county (a) where the parties or any of them reside or have their principal place of business within the commonwealth, or (b) where the Commission has its principal place of business, or (c) of Suffolk. The commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the Commission’s order or decision. If the Commission, pursuant to the authority granted by section 24(1) of chapter 32, seeks to compel the observance of or restrain the violation of the provisions of Sections 1 to 28, inclusive, a party aggrieved by such an action may appeal to the superior court in accord with the provisions of section 14 of chapter 30A. If an action pursuant to Section 24 (1) has already been instituted in the superior court, the person’s right to review shall flow from the superior court case which has already begun.



## Section 19

Paragraph (a) of subdivision (6) of Section 20 of Chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out lines 842 through 845 inclusive and inserting in place thereof the following: -

- (a) The elected and appointed members of any city, town, county, regional, district, or authority retirement board upon acceptance of the appropriate legislative body shall receive a stipend provided, however, that said stipend shall not be less than three thousand dollars per annum nor exceed seven thousand five hundred dollars per annum; provided further,

## Section 20

Said subdivision, as so appearing, is hereby further amended in line 853 by striking out the word "three" and inserting in place thereof the word "seven thousand five hundred".

## Section 21

Section 50 of Chapter 7 of the General Laws is hereby amended by adding the following clause:-

- (k) develop an educational program for retirement board members provided that participation in said program shall be mandatory and provided, further, that failure to participate shall prohibit a retirement board member from serving beyond the conclusion of the term in which the failure took place. In the event the non-complying retirement board member is an ex-officio member his or her term shall cease upon notification to the retirement board by the Commission of that non-compliance.

## Sections 19/20 Notes

*Increase in Board stipend to a maximum of \$7,500 and a minimum of \$3,000.*

## Section 21 Notes

*PERAC develop a mandatory education program for Board members.*

## Notes



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